STATE OF MICHIGAN
CIRCUIT COURT FOR THE FOURTH JUDICIAL CIRCUIT
JACKSON COUNTY

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff,

v

PAUL EDWARD BELLAR,
JOSEPH MATTHEW MORRISON,
PETE MUSICO
Defendants.

Nos. 20003171 FH
20003172 FH
20003173 FH
HON. THOMAS WILSON

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THE PEOPLE'S *GOECKE* MOTION TO AMEND THE INFORMATION

NOW COMES the People of the State of Michigan, by and through Dana Nessel, Attorney General, and Assistant Attorneys General Sunita Doddamani, William Rollstin, and John S. Pallas, and move this Court to amend the information in each of these cases to reinstate or add a charge of making and communicating a

threat of terrorism, contrary to MCL 750.543m(1)(a) and, in support thereof, state the following:

1. In this Jackson County case, the Michigan Attorney General (hereinafter "the People") charged defendants Joseph Morrison and Pete Musico by complaint and warrant with making and communicating a threat of terrorism, contrary to MCL 750.543m, being a member of a gang that that did commit or attempt to commit the felony of providing material support for acts of terrorism, contrary to MCL 750.411u, providing material support or resources to a terrorist organization, contrary to MCL 750.543k(1)(b), and with possession of a firearm during the commission of a felony (felony-firearm), contrary to MCL 750.227b. The People charged defendant Paul Bellar by complaint and warrant with felonies identical to those charged against defendants Morrison and Musico other than the felony of making and communicating a threat of terrorism.

2. Jackson County District Court Judge Michael Klaeren (hereinafter "the district court") held a preliminary examination on the charges against the defendants for three days beginning on March 3, 2021.

3. On March 29, 2021, the district court heard arguments from the attorneys on whether the defendants should be bound over to this Court as charged. In addition, on that date, the prosecutor made a motion to add a charge of making and communicating a threat of terrorism, contrary to MCL 750.543m, against defendant Bellar. But the district court dismissed the making and communicating a threat of terrorism charges against defendants Morrison and Musico and denied

the prosecutor's motion to add that charge against defendant Bellar. It did, however, bind each defendant over to the circuit court on one count of being a member of a gang that that did commit or attempt to commit the felony of providing material support for acts of terrorism, one count of providing material support or resources to a terrorist organization, and with one count of felony-firearm.

4. The People now seek to amend the information in these cases pursuant to *People v Goecke*, 457 Mich 442 (1998), to reinstate the making and communicating a threat of terrorism charge against defendants Morrison and Musico and to add the charge against defendant Bellar. The district court's denial of a bindover on that charge was both an abuse of discretion and an error as a matter of law.

5. This motion relies on the attached brief in support.

Respectfully submitted,

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DATED: June 25, 2021

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Nos. 20003171 FH, 20003172 FH, 20003173 FH

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BRIEF IN SUPPORT OF THE PEOPLE'S *GOECKE* MOTION TO AMEND THE INFORMATION

ARGUMENT

I. The district court both abused its discretion and erred as a matter of law in failing to bind over defendants Morrison and Musico to the

circuit court on the charge of making and communicating a terrorist threat, contrary to MCL 750.543m(1). It also erred in denying the prosecution's motion to add such a charge against defendant Bellar and bind him over to the circuit court. This Court should grant the prosecution leave to amend the information to reinstate/add this charge against each defendant.

A. Standard of review of a bindover decision/motion to amend the information.

A prosecutor may seek review of the district court's decision to bindover a defendant to circuit court on some charges, but to dismiss other charges, by filing a motion to amend the information in the circuit court. *People v Goecke*, 457 Mich 442, 455–458 (1998). A circuit court must entertain such a motion and "the circuit court does not have discretion to deny review on the ground that the prosecution was required to file an application for leave to appeal." *Id.* at 458.

A district court's decision to bind over a defendant to circuit court is reviewed to determine whether the district court abused its discretion in making its decision. *People v Norwood*, 303 Mich App 466, 468 (2013); *People v Flick*, 487 Mich 1, 9 (2010). "A trial court abuses its discretion when its decision falls outside the range of reasonable and principled outcomes." *People v Waterstone*, 296 Mich App 121, 131–132 (2012).

"A trial court also necessarily abuses its discretion when it makes an error of law." *People v Al-Shara*, 311 Mich App 560, 566 (2015). Moreover, "where the decision entails a question of statutory interpretation, i.e., whether the alleged conduct falls within the scope of a penal statute, the issue is a question of law that [is reviewed] de novo." *People v Waltonen*, 272 Mich App 678, 683–684 (2006), citing

People v Stone, 463 Mich 558, 561 (2001), *People v Hotrum*, 244 Mich App 189, 191 (2001), and *People v Riggs*, 237 Mich App 584, 587 (1999).

"The purpose of a preliminary examination is to determine whether probable cause exists to believe that a crime was committed, and that the defendant committed it." *People v Bennett*, 290 Mich App 465, 480 (2010) (internal citation omitted). But "[a] preliminary examination is not a trial and the binding over of a defendant is not a conviction." *People v Moore*, 180 Mich App 301, 310 (1989). So, "[i]f preliminary examination evidence conflicts or raises a reasonable doubt regarding a defendant's guilt, this question is properly left for judge or jury at trial, and the binding over of the defendant is still required." *Id*.

A finding of probable cause requires proof of each of the elements of the crimes charged, or evidence from which each element may be inferred sufficient to "cause a person of ordinary prudence and caution conscientiously entertain a reasonable belief of the defendant's guilt." *People v Shami*, 501 Mich 243, 251 (2018) (internal quotation marks and citations omitted). However, establishing probable cause does not require the prosecution to prove each element of a crime beyond a reasonable doubt. Instead, the level of evidence sufficient to bind over a defendant to the circuit court is *far lower* than that required to convict a defendant. *People v Greene*, 255 Mich App 426, 443–444 (2003). "[T]o find probable cause, a magistrate need not be without doubts regarding guilt. The reason is that the gap between probable cause and guilt beyond a reasonable doubt is broad and finding

guilt beyond a reasonable doubt is the province of the jury." *People v Yost*, 468 Mich 122, 126 (2003) (citations omitted).

"Circumstantial evidence and reasonable inferences arising from the evidence may be sufficient to justify binding over a defendant." *People v Woods*, 200 Mich App 283, 288 (1993). When the prosecution has presented competent evidence sufficient to support probable cause that the charged crime(s) were committed and that the defendant committed them, the district court is *required* to bind the defendant over to the circuit court for trial. *People v Cervi*, 270 Mich App 603, 616 (2006).

B. The district court erred as a matter of law in misinterpreting two elements of the charge of making a terrorist threat—an error which led it to incorrectly dismiss these charges against Morrison and Musico and to deny the prosecutor's motion to add this charge against defendant Bellar.

The district court erred in two significant respects when discussing the elements of the charge of making and communicating a terrorist threat. These serious errors led the district court to incorrectly dismiss the making and communicating a terrorist threat counts against defendants Morrison and Musico and, similarly, to incorrectly deny the prosecutor's request to add a count of making and communicating a terrorist threat against defendant Bellar. First, the district court erred in finding that a person charged with making and communicating a terrorist threat must harbor the specific intent to cause what it called "mayhem." Second, the district court erred in finding that the threat in this case was not communicated to "any other person" under the statute because it was not expressed

to anyone outside of the Wolverine Watchmen organization. When the statute is properly interpreted, the evidence is more than sufficient to establish probable cause that all three defendants committed the offense of making and communicating a terrorist threat. As such, this Court should reinstate the dismissed counts against Morrison and Musico and allow the prosecutor to amend the information to add a count of making and communicating a terrorist threat against Bellar.

1. The statute prohibiting the making and communication of a terrorist threat.

Any discussion of the district court's errors must begin with an examination of the applicable statute. MCL 750.543m(1)(a), as relevant to this case, states that "[a] person is guilty of making a terrorist threat … if the person … [t]hreatens to commit an act of terrorism and communicates that threat to any other person." MCL 750.543b(a) defines an "act of terrorism" as a willful and deliberate act that is all of the following: (i) An act that would be a violent felony[1] under the laws of this state, whether or not committed in this state, (ii) an act that the person knows or has reason to know is dangerous to human life,[2] and (iii) an act that is intended to

[1] " 'Violent felony' means a felony in which an element is the use, attempted use, or threatened use of physical force against an individual, or the use, attempted use, or threatened use of a harmful biological substance, a harmful biological device, a harmful chemical substance, a harmful chemical device, a harmful radioactive substance, a harmful radioactive device, an explosive device, or an incendiary device." MCL 750.543b(h).

[2] " 'Dangerous to human life' means that which causes a substantial likelihood of death or serious injury or that is a violation of section 349 or 350." MCL 750.543b(b).

intimidate or coerce a civilian population or influence or affect the conduct of government or a unit of government through intimidation or coercion."

2. The district court erred as a matter of law in finding that the specific intent to commit mayhem was an element that the prosecution must prove in order to establish the charge of making and communicating a terrorist threat.

The district court not just once – but several times – stated that the statute prohibiting making and communicating a terrorist threat requires a showing that the charged defendant had the specific intent to commit mayhem. This was a significant contributor to the district court's decision to dismiss the making a terrorist threat charge against Morrison and Musico and its related decision to deny the prosecutor's request to add the charge against Bellar.

In questioning the prosecutor at the beginning of her bindover argument, the district court said that the threats "need to be made with the intent to commit mayhem or cause shall we say dysfunction within the state …." (3/29/21 Tr. at 17). The district court moments later stated with respects to the facts of this case: "I'm not seeing where there's an intent to commit, and once again the statute doesn't say it, but intent to commit mayhem." (*Id.* at 19).

In her rebuttal argument, the prosecutor even pointed out to the district court that "the only intent that the prosecution had the burden to prove was defendant's general intent to communicate a true threat. So, a general intent to communicate a true threat, and so we're talking about the act of communication." (3/29/21 Tr. at 56). She repeated this a moment later: "[T]here only has to be, the

prosecution only has the burden of proof [of demonstrating] the defendants[']
general intent to commit a true threat …. [and an intent to bring] fear is not part of
the statute." (*Id.* at 56).

After hearing from all the attorneys, the district court began its ruling by discussing what it called "the charge that really causes me difficulties" – making and communicating a terrorist threat. (3/29/21 Tr. at 72). The district court stated that it was ruling that "the threat must be done with an intent to create mayhem." (*Id.*) Moments later, the district court repeated that "there has to be some form of intent here to insight [sic] mayhem …." (*Id.* at 73). The district court then found that, under its interpretation of the charge of making and communicating a terrorist threat, the evidence presented at the preliminary examination was insufficient to establish such a specific intent. Thus, it dismissed the charge against Morrison and Musico and denied the prosecutor's motion to add that charge to those against Bellar. (*Id.* at 73, 87). In other words, the district court declined to bindover any of the defendants on the charge of making and communicating a terrorist threat because it found that the crime required a specific intent to commit mayhem and the prosecution had not proven that any of the defendants harbored such a specific intent.

The district court erred as a matter of law in its ruling on the making and communicating a terrorist threat charge. Making and communicating a terrorist threat is a *general* intent crime, *not* a specific intent crime. In any event, the district court read into the statute an element – a specific intent to commit mayhem

– that simply does not exist. The district court's error is clear from a review of the statute prohibiting making and communicating terrorist threats and two Michigan Court of Appeals decisions interpreting the statute, one of which was just released in May of 2021.

In order to avoid First Amendment problems in the application of the statute, the prosecution must demonstrate that the defendant's statement was a "true threat" meaning that it was "the communication of a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals" made with "an intent to intimidate or coerce." *People v Osantowski*, 274 Mich App 593, 603, 605 (2007), rev'd in part on other grounds 481 Mich 103 (2008). It is question of fact for a jury to determine as to whether a statement constitutes a "true threat." *Id.*, citing *United States v Daughenbaugh*, 49 F 3d 171, 173 (CA 5, 1995). *See also People v Gerhard*, ___ Mich App ___ (Docket No. 354369, June 24, 2021), at p 5 ("[D]efendant overlooks that whether his speech constituted a true threat is itself a question of fact….")[3]

But this does not mean that the prosecution has to prove an "intent to intimidate/coerce" or an "intent to commit mayhem" (using the district court's phrase) as an element of making a terrorist threat. Nor does the speaker even have to intend to carry out the threat or even have the ability to carry out the threat. Rather, "the only intent that the prosecution [has] the burden to prove [is the]

[3] As this published opinion is not yet available on Westlaw, the People are attaching it to this brief as Appendix A.

defendant's *general intent* to communicate a 'true threat.' " *Osantowski*, *supra* at 605 (emphasis added), citing *Virginia v Black*, 538 US 343, 359–360 (2003).

Whether a crime is a general or specific intent crime is important for purposes of determining whether evidence is sufficient to sustain a charge of the crime. This is because "the distinction between specific intent and general intent crimes is that the former involves a particular criminal intent beyond the act done, while the latter involves merely the intent to do the physical act." *People v Smith*, ___ Mich App ___; 2021 WL 936598, at *2 (March 11, 2021).

The fact that making and communicating a terrorist threat is a general intent crime was recently emphasized by the Michigan Court of Appeals in its published decision in *People v Byczek*, ___ Mich App ___; 2021 WL 1822804 (May 6, 2021). In that case, in the context of the making and communicating a terrorist threat statute, the Court held that, once the "general intent" to make a "true threat" has been demonstrated, "there [is] sufficient evidence from which a jury could conclude that the statement was a 'true threat.' " *Id.*, 2021 WL 1822904, at *7. In *Byczek*, the Court analogized to the federal terrorism statute to support its view that the statute only requires proof of a general intent:

> [U]nder the federal terrorism statute it is the threatening nature of the communication that makes it worthy of criminal sanction, which does not and should not require the same mens rea as a completed substantive offense. That is, to constitute a threat for purposes of federal terrorism law, there is no requirement that a defendant have the mens rea of intending to intimidate a particular population or government; the transmission of a threat to commit an act that would have that effect is sufficient.... Given the similarity between the federal and Michigan approaches to terrorism, and the dangers posed by threats, it is apparent that Michigan's Legislature, in enacting MCL

> 750.543m(a), intended to address those evils through a lesser mens rea than is required for a complete substantive offense.

2021 WL 1822804, at *8.

As such, the district court erred in finding that the prosecutor was required to show that a defendant has the specific intent to cause mayhem in order in order to bindover a defendant with making and communicating a terrorist threat under MCL 750.543m(1)(a). As interpreted by *Osantowski* and *Byczek*, the statute criminalizing making and communicating a terrorist threat *only* requires the prosecutor demonstrate that the defendant had the general intent to make a threat to commit an act of unlawful violence *that would have the effect* of intimidating or coercing, *not* that the defendant specifically intended intimidation, coercion, or (in the words of the district court) "mayhem." *See also Gerhard*, *supra*, at p 5 ("As defendant concedes, a 'true threat' does not turn on whether the speaker intends to carry out the threat, but on whether the speaker intends to communicate the threat.")

The district court's misinterpretation of the statute led it to err as a matter of law in dismissing the making and communicating a terrorist threat charge against Morrison and Musico and to deny the prosecutor's motion to add the charge against Bellar. And since the evidence presented at the preliminary examination more than sufficiently established that all three defendants harbored the necessary general intent (see discussion below in section C.), this Court should grant this motion to amend the information to add one count of making and communicating a terrorist threat to the information in each of the defendant's cases.

3. The district court erred as a matter of law in finding that the making and communicating a terrorist threat statute requires something more than merely communicating that threat to "any other person"

But adding a specific intent element to the offense of making a terrorist threat is not the only legal error committed by the district court. The district court went beyond the plain language of the statute in requiring that the prosecution demonstrate that a defendant charged with making a terrorist threat communicate the threat to not just "any other person," but someone who is completely outside the sphere of the terrorist organization. The statute contains no such requirement. But even if it did, the confidential informant in this case – known as "Dan" – qualifies as such a person.

The district court began hinting at this interpretation of the making and communicating a terrorist threat statute during the bindover arguments. During those arguments, the district court asked the prosecutor: "… I would like you to address the issue of whether the act needs to be published, a person, but I wonder what your take is on whether it needs to be published to someone *outside the group*. *Because the whole idea of this threat is to scare someone*." (3/29/21 Tr. at 13–14; emphasis added). The prosecutor responded that the plain language of the statute indicates that the threats have to be communicated – not published – to any other person. (*Id.* at 16). The district court then said that it understood the meaning of the phrase "any person" but then said that the threat/words at issue were made "because they [the defendants] would have perceived all of the individuals that they were communicating with would not say anything to anyone" and then asked the

prosecutor to "identify any person that received any purported threats outside the closed group of the Watchmen or the closed group of the various co-conspirators." (3/29/21 Tr. at 18). The prosecutor responded that not only were communications made between group members, but "many of these statements were communicated on Wire to other people that are not seated in the courtroom…. Some of these statements were made over that communications means." (*Id.*)

The district court interjected, stating that "[a]ll these statements made by these defendants, if they made them, are preaching to the choir. They are going to keep it secret." (*Id.* at 18–19). It then noted that "it's quite clear" that the recipient of the threat in the *Osantowski* case was "going to tell someone." (*Id.* at 21). The prosecutor responded that, if that were the standard, then the confidential informant ("Dan") met that standard because "he testified that he was in fact concerned about these threats, if he were concerned about these threats then that satisfies the statute in and of itself" and, as such, "[t]hey've communicated at least to him." (*Id.*)

During the prosecutor's rebuttal arguments, the district court again raised this subject: "And how do you intend to intimidate – intimidate or coheres [sic] a civilian population when you're preaching to the choir, when you clearly believe that it's not going to leave your closed echo chamber?" (3/29/21 Tr. at 63). The prosecutor responded by again referencing Dan: "Not everyone in the choir is part of the choir judge" (*Id.* at 64). The district court retorted: "But … they [the defendants] believed Dan to be part of their group." (*Id.*) The prosecutor then

referenced the plain language of the statute: "Then … what you are saying … is that if you find that communicating to Dan means that Dan is not a person for purposes of the statute … that's what I am pushing on back against judge." (*Id.* at 64–65).

Ultimately, in declining to bindover any of the defendants on the making and communicating a terrorist threat charge, the district court said, in relevant part, "even if it you voice it to Dan the informant[,] all three of the defendants, individually and collectively clearly believed that Dan was with them and wouldn't say anything. So yes, they're talking to a person but they're not communicating an act of terrorism as defined by *Osantowski*.[4] I am going to dismiss count one." (*Id.* at 73).

The district court again erred as a matter of law. The plain language of the making and communicating a terrorist threat statute *only* requires that the terrorist threat be communicated to "any other person." The district court erred in finding that the statute requires something more, specifically that the "any other person" referenced in the statute is someone other than a like-minded member of the terrorist group. In any event, the confidential informant ("Dan") was in fact *not*

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[4] To the extent that the district court appears to be saying here that the threat was not to commit an "act of terrorism" as defined by MCL 750.543b(a), it was incorrect. As discussed below in section C. of this brief, the threats made by these defendants involved harming law enforcement officers and/or Michigan Governor Whitmer. These are not just "violent felonies," but clearly are an act that the defendants knew or should have known was "dangerous to human life" and that whole point of doing so would be to "affect the conduct of government or a unit of government through intimidation or coercion."

a like-minded member of the Wolverine Watchmen and clearly qualifies as "any other person" under the statute even under the district court's incorrect limitation on that definition.

"Statutory interpretation begins with the plain language of the statute." *O'Leary v O'Leary*, 321 Mich App 647, 652 (2017). "The Legislature is presumed to have intended the meaning it plainly expressed, and clear statutory language must be enforced as written." *People v Bush (On Remand)*, 315 Mich App 237, 245 (2016) (internal quotation marks and citation omitted). Where that language is clear and unambiguous, the statute must be applied as written and further analysis is neither required nor permitted. *People v Miller*, 498 Mich 13, 23 (2015); *People v Borchard-Ruhland*, 460 Mich 278, 284 (1999). Moreover, a court must give effect to the entire statute and not interpret it in a manner that would render part of it nugatory. *Miller*, *supra* at 25.

Here, MCL 750.543m(1)(a) says that a terrorist threat must be communicated to "any other person." There is no adjective preceding the phrase "any other person" that limits the scope of the phrase. In other words, pursuant to the plain language of the statute, a terrorist threat can be communicated *to anyone* other than the maker of the threat. Whether the threat is communicated to others in what the speaker believes is "closed group" or even is communicated to only a true ally of the speaker is of no moment under the statute. The plain language of the statute requires nothing more than that the threat be communicated "to any

other person." It bears saying again—that phrase means nothing more than it plainly states – "any other person."[5]

The district court should have stopped with the plain language of the statute, but it did not. Instead, it interpreted the statute in a way that it believed comported with its view of the public policy behind the enactment of Michigan's anti-terrorism statute. A court is prohibited from looking to a statute's purpose or its public-policy objectives unless the statutory language is ambiguous or unclear. *People v Pickney,* 501 Mich 259, 272 (2018). When a court looks to public policy without first analyzing whether the plain language of the statute is clear and unambiguous, it errs because this runs counter to the rule of statutory construction that requires a court to discern legislative intent from plain statutory language. *Id.*

Here, as discussed in more detail below in section C. of this brief, each defendant clearly communicated their plans with each other and other members of the Wolverine Watchmen. This meets the "any other person" requirement of the statute. Moreover, even if this Court were to find that the statute requires that the threat be communicated to someone outside of the terrorist organization, "Dan" clearly fits the bill. As detailed below, he was clearly concerned enough about the threats that were being communicated to him by the defendants that he went to the

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[5] Here, there is even no need to consult a lay dictionary—much less a legal dictionary—to discern the definition of the phrase "any other person." The phrase simply means any person *other than* the maker of the threat. Undefined statutory terms are to be given their plain and ordinary meaning, unless the undefined word or phrase is a term of art that lacks a unique legal meaning and only then should dictionaries—lay or otherwise—be consulted. *See People v Meeker*, ___ Mich App ___; 2021 WL 1822910, at *3, n 2 (May 6, 2021).

police and ultimately became a confidential informant working for law enforcement. Whether the defendants knew that Dan was not "one of them" or did not have like-minded views is of no relevance under the statute. Moreover, to rule otherwise would be to say that Dan was not "a person" which runs counter to the statute. He was not stripped of his "personhood" merely because the defendants thought he was "one of them."

4. Conclusion

In sum, the district court judge made two (somewhat related) legal errors which ultimately led to its dismissal of the making and communicating a terrorist threat charges against defendants Morrison and Musico and to the denial of the prosecutor's motion to add the same charge against defendant Bellar. First, it erroneously held that an element of the charge included a specific intent to commit mayhem when the Michigan Court of Appeals has twice held that the offense requires only a general intent to make the threat. Second, it ignored the plain language of the statute requiring only that the threat be communicated "to any other person" when it held that the defendants must have communicated the threat to those outside its organization (or to those they thought were not in their organization or harbored like-minded views).

Under a proper interpretation of the statute prohibiting threatening and communicating an act of terrorism, the evidence was more than sufficient to establish probable cause that each defendant committed the offense. The next section of this brief, in section C., discusses that evidence.

C. When the statute is properly interpreted, the evidence presented at the preliminary examination establishes probable cause that defendants Bellar, Morrison, and Musico committed the offense of making and communicating a terrorist threat.

There was a plethora of evidence presented at the preliminary examination that established probable cause that each of the defendants – Bellar, Morrison, and Musico – made and communicated threats of terrorism.[6] What follows are simply examples of such communications for probable cause purposes. This discussion is not meant to limit the scope of what the People may argue moving forward as evidence of making and communicating terrorist threats as to any or all of the defendants. First, however, in order to place the defendants' threats in context, however, some basic information about the Boogaloo movement and Wolverine Watchmen group should be discussed.

1. The Boogaloo movement/the Wolverine Watchmen

Henrik Impola, an agent with the Federal Bureau of Investigation (FBI) who specializes in counter-terrorism investigations (both domestic[7] and international), testified that "Boogaloo is a term for a civil war, which is [a] complete collapse of society in which anarchy rules." (3/3/21 Tr. at 23). The basic tenants and beliefs of the Boogaloo movement are that, as society completely collapses, everyone will need

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[6] It should be remembered that "at the preliminary examination stage of proceedings, the question is whether it is *impossible* for a statement to constitute a true threat, *not* whether it is possible for the trier of fact to deem it not a true threat." *Gerhard*, *supra* at p. 6 (emphasis added).

[7] Agent Impola described "domestic terrorism" as "political violence within the United States …. It's basically homegrown actors who decide to go against the government." (*Id.* at 8).

to defend themselves "proactively and be engaged in the fight … against the government … [and] those who don't believe the same as you." (*Id*. at 23–24). For a number of reasons, the FBI classifies the Boogaloo ideology as "an extremist ideology." (*Id*. at 24). Agent Impola testified that those who adhere to the boogaloo ideology advocate for violent felonies that are dangerous to human life and are politically motivated. (*Id*. at 26). He further characterized the adherents to the Boogaloo ideology as "anti-government, anti-law enforcement type[s]." (*Id*. at 30). He defined "Boojahideen" as "warriors who are willing to martyr themselves … somebody who is willing to die for the cause." (*Id*. at 21–22). The Wolverine Watchmen, which Agent Impola described as a "self-styled anarchist militia," is a group created by defendant Morrison in which defendants Bellar and Musico were also significantly involved, and which pushed Boogaloo propaganda to recruit members. (*Id*. at 10, 30).

2. Bellar

At the "Operation Gridlock" protest, Bellar told Dan and the others that he was "ready to engage law enforcement." (3/3/21 Tr. at 124). Dan testified that, at an April 30, 2020, protest, Bellar discussed wanting to "bum-rush" the Capitol. (3/5/21 Tr. at 65–66). In discussing various attack plans, Bellar (and Ty Garbin) "suggested anticipating a law enforcement response and having snipers to take out police when they respond to try to protect the Capital." (3/3/21 Tr. at 162). At a meeting at the "Vac Shack" business when Adam Fox was discussing a plot to take

over the Capitol and kidnapping Governor Whitmer, Bellar said, "we really need [to] formulate[] a plan for this." (3/5/21 Tr. at 111).

In response to a comment from Ty Garbin that Governor Whitmer was going to do a "temporary short extension" of the COVID related shutdown order, Bellar said in a Wire Post, "I swear to God if this is true, I'm going to [M]olotov her fucking house. I am so fucking done with her." (3/3/21 Tr. at 90, People's Exhibit 11-A). At another point, Bellar said: "She [Governor Whitmer] needs to get dragged to the streets and hung. I knew this shit was gonna happen." (3/3/21 at 91, People's Exhibit 12).

3. Morrison

At a tactical training on April 19, 2020, Morrison (along with Bellar and Musico) discussed "breaching the Capital." (3/3/21 Tr. at 128). That discussion continued on the day of another protest – April 30, 2020. (*Id.* at 129–130). As that protest was going on, Morrison said that "I really want to start it …. I was trying to get them [the police] to touch me." (*Id.* at 137).

In a Wire chat on June 12, 2020, Morrison told Dan that the plans the Wolverine Watchmen had were "bigger than Seattle."[8] (People's Exhibit 19). He also posted online, "Patriots time is fleeting, if we do not act soon our rights shall

[8] Referencing the unrest and protests that occurred in Seattle, Washington during in mid-2020.

perish. Shall we live on our knees or die on our feet. Ask yourself is security in my time worth tyranny for my children. As for me the Republic is worth fighting for. In the words of Patrick Henry 'Give me liberty or give me death' ". (People's Exhibit 4-F).

At a meeting on August 9, 2020, Morrison confirmed in Dan's presence that he was "good to go" on Adam Fox's plan to kidnap Governor Whitmer. (3/3/21 Tr. at 210). Morrison, using his alias "Boogaloo Bunyan," also discussed putting "Governor Whitmer[']s head on a platter" in a meme shared by the Wire app. (3/3/21 Tr. at 47, People's Exhibit 4-O). He also shared a photo of himself on the social media platform Instagram, using his alias, accompanied with the phrase "1, 2 I'm coming for your 3, 4 you better lock your door @gewhitmer." (*Id.*, People's Exhibit 4-N).[9]

A post/meme/reshare on Morrison's Facebook page summed up his beliefs and tenants for those reading it:

> The time has come to take arms and resist, what hurts the most is you call us terrorist, but before you do stop so you may know this.
>
> We see a sickness and like a plague it is spreading, we don't like the direction our country's heading, the day we fight to preserve liberty we are dreading, but that state of our country is hella unsettling.
>
> We will not be ruled from someone who sits on top a throne, using our tax money blowin' up kids with a drone, an oil barrel marks the grave instead of a stone, and cops have stolen, caged, killed so many they can never atone,

[9] The People would note that, in *Gerhard*, *supra* at pp 1, 5, 7, the Court of Appeals expressed no hesitation in finding that a post on a social media site ("Snapchat") could constitute a "true threat."

> All we wanted was peace, a family, and a home, but these commies, tyrants, and jack boots couldn't fucking leave us alone.
>
> We are boojahideen, those who take arms and resist, but before you call us terrorist, know that it's because your complacency allowed all this.

(3/3/21 Tr. at 42; People's Exhibit 4-D).

4. Musico

Dan testified that there were posts on the Wire app by Musico that discussed doing what he termed a "reverse red flag" by finding out the home addresses of law enforcement officers, going to their homes, and killing them. (3/5/21 Tr. at 27). The seriousness with which Musico made this statement is reflected by what he said next. Musico said that he had followed a police officer to his home, threw a Molotov cocktail at his home, and then waited for the officer to come out while armed with a rifle with an intent to kill him. (3/5/21 Tr. at 25). For this reason, Dan found Musico's statements about wanting to kill police officers particularly alarming. (*Id.*)

In the context of a conversation, he was having with Adam Fox, Musico said that he wanted to get together with "the guys" and go into the Capitol "and just kick it [the Boogaloo movement/civil war] off right there." (*Id.* at 101–108). Musico also told Dan that what Fox was suggesting was no joke and that "this is about putting rifles in front of law enforcement or police officers' faces and politicians[']faces and pulling the fucking trigger." (*Id.* at 102).

Musico told Dan, with respect to Operation Gridlock in April of 2020, he was prepared to "kick off" the Boogaloo at that protest by committing "Jihad," martyring himself, and being the "first one." (3/3/21 Tr. at 124). He said that he wanted to get

close to the Michigan State Police (MSP) "and try to get them to touch him." (*Id.* at 124).

Dan also testified that Musico discussed finding the address of Governor Gretchen Whitmer. (*Id.* at 32). In fact, Musico shared a post that he said he found on Facebook. Along with photographs of what was purportedly the Governor's cottage in Traverse City, and address and tax information for the cottage, Musico shared the following information:

> Plz share…. I saw a post a few days ago on FB where the Mi. governor is going to be this Saturday. Updated, I found the posts and pictures!
>
> The post stated that their [sic] having a graduation party at their small blue cottage in Transverse [sic] City. There is a protest at 1:00. I will update this post with the address, when I find the pic's that was posted on other page. Isn't that nice, she opens up northern Michigan, how convenient for THEM!!!
>
> Nothing, but lies.

(3/3/21 Tr. at 53–54; People's Exhibit 5-A).

At an April 30, 2020, protest in Lansing, Musico told Dan that, once they gained access to the Capitol, "[h]e was going to go to the opposite side of the building and catch that bitch [Governor Whitmer] as she came out the emergency exit." (*Id.* at 73–74).

Musico discussed with Dan "attacking other politicians or trying to go directly to the homes of politicians and the homes of law enforcement." (3/3/21 Tr. at 166). Musico discussed his "three plan" which was his "idea of going into law enforcement and politicians' homes at three a.m. and executing no knock raids and either executing them or kidnapping them." (*Id.* at 197).

5. Conclusion

None of these threats were mere idle chatter. In other words, the testimony and evidence at the preliminary examination in this case made abundantly clear that all three defendants – Bellar, Morrison, and Musico – were engaged in *true real-life activities* to plan, prepare, and then carry out politically motivated violence. All three defendants did not just make these threats but backed them up with action by doing training on offensive tactics and ultimately providing personnel for the kidnapping plot. At the examination, Agent Impola, summed it up neatly when he testified: "It was not just talk, they did a lot of training, planning and preparation." (3/3/21 Tr. at 23). Certainly, Dan took them seriously enough that he became alarmed and contacted law enforcement. (3/5/21 Tr. at 28, 35–42).

"True threats" were made by each defendant (to each other as well as to Dan) as such threats are defined above. And the required *general* intent to make those threats is present. Certainly, at a minimum, when the statute is properly interpreted and applied to the testimony and evidence produced in this case during the preliminary examination, probable cause that each defendant made and communicated a terrorist threat was established.

Thus, after the district court's legal errors are corrected, and the evidence presented at the preliminary examination examined under the proper statutory lens, there is no doubt that the district court should have bound over defendants Morrison and Musico on the charge of making and communicating a terrorist threat. It likewise should have granted the prosecutor's motion to add that charge against defendant Bellar and bind him over to this Court as well.

For these reasons, this Court should grant this motion to amend the information pursuant to *People v Goecke*.

CONCLUSION AND RELIEF REQUESTED

The People respectfully request that this Court, in accordance with *People v Goecke*, 457 Mich 442 (1998), allow an amendment to the information in this case that reinstates the charge of making and communicating a threat of terrorism charge, contrary to MCL 750.543m(1)(a), against defendants Morrison and Musico and to add the same charge against defendant Bellar.

Respectfully submitted,

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